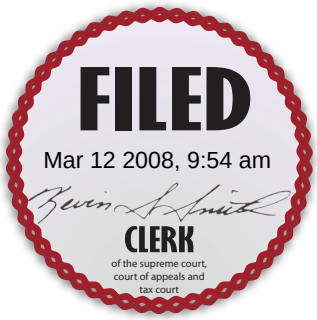

APPELLANTS PRO SE:

JOSE AND NANCY OLIVARES
Syracuse, Indiana

ATTORNEY FOR APPELLEE:

SCOTT J. LENNOX
Reed & Earhart, Attorneys at Law, P.C.
Warsaw, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JOSE OLIVARES and NANCY OLIVARES,	)	
	)	
Appellants-Defendants,	)	
	)	
vs.	)	No. 43A03-0610-CV-476
	)	
TONI VAN GOMPEL,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT
The Honorable Joe V. Sutton, Judge
The Honorable Michael E. Sposeep Senior Judge
Cause No. 43D03-0606-PL-1

March 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jose and Nancy Olivares appeal *pro se* a judgment on the evidence in favor of their daughter, Toni Van Gompel. The Olivareses raise seven issues and a number of sub-issues, which we consolidate and restate as two:[1] whether the trial court properly declined to consider Nancy's claim of an "equitable life estate," (Appellants' Br. at 18), in property she quitclaimed to her daughter via a deed that mentioned no such life estate, and whether the Olivareses were improperly denied their motion for change of judge or change of venue. We affirm.

FACTS AND PROCEDURAL HISTORY

In July of 2002, Ralph and Doris Rhodes conveyed a residence in Syracuse to Van Gompel and her mother, Nancy Olivares, via a warranty deed. The following month Nancy quitclaimed her interest in the property to Van Gompel. Nancy prepared the quitclaim deed, which recites Nancy "[h]ereby disclaims any right, title, or interest" in the real estate. (App. at 4.)

---

[1] Because Nancy reserved no "equitable life estate," we need not address her arguments that: 1) the denial of certain of her repeated motions for continuances and to compel discovery responses was improper, as that discovery was apparently intended to gather facts supporting Nancy's "equitable title," (Appellant's Br. at 13); 2) the trial court improperly applied a summary judgment standard, as the issues of fact the Olivareses appear to be asserting concern the retention of an equitable estate; 3) the Olivareses were improperly denied leave to file a second amended counterclaim premised on a life estate as consideration for the quitclaim deed; and 4) their motion to dismiss, which was premised on a purported oral agreement they could live in the house rent-free, was erroneously denied.

The Olivareses also allege error in the appointment of a senior judge to conduct a hearing while the original judge continued to rule on some pretrial matters. They assert, without explanation or citation to authority, that "splitting or delegation of [the court's] power to adjudicate is very questionable," (Appellant's Br. at 9), and "such bifurcation is repugnant where equity is involved." (*Id*.) We are unable to address this allegation of error, as the Olivareses do not offer cogent argument supported by legal authority as required by Ind. Appellate Rule 46(A)(8)(a). Their bald assertions do not, without more, amount to the "argument" supported by legal authority and citations to the record our rules require. *See, e.g., Pitcock v. Worldwide Recycling, Inc.*, 582 N.E.2d 412, 416 (Ind. Ct. App. 1991) (noting bald assertions in an appellate brief would not be considered in determining whether genuine issue of fact existed for summary judgment purposes).

Nancy and Jose apparently continued to live in the house for the next four years. Then in February 2006, Van Gompel brought a "Complaint for Possession of Real Estate," (*id*. at 1), seeking an order that her parents surrender the property so Van Gompel could sell it. In March of 2006, the Olivareses sought a change of venue and/or change of judge "because of the pervasive bias and prejudice they have experienced from the early 1950's and up to and including the present." (*Id*. at 38.) The court granted the motion, but then rescinded its order a few days later on discovering the motion was not timely filed. In June of 2006 the trial court granted Van Gompel's motion for judgment on the evidence, finding there was no writing that transferred a life estate to the Olivareses and noting a transfer of an interest in real property must be in writing.

DISCUSSION AND DECISION

Our standard of review of a judgment on the evidence is well settled. We will consider only the evidence most favorable to the nonmovant, here the Olivareses, along with all reasonable inferences to be drawn therefrom. *Lumbermens Mut. Cas. Co. v. Combs*, 873 N.E.2d 692, 712 (Ind. Ct. App. 2007). We must determine whether there was evidence of probative value supporting each element that would justify submission of the claim to the factfinder. *Id*. If there is any probative evidence or reasonable inference to be drawn from the evidence, or if reasonable people would differ as to the result, judgment on the evidence is properly denied. *Id*. A motion for judgment on the evidence should be granted only in those cases where the evidence is not conflicting and is susceptible to only one inference, supporting judgment for the movant, here Van Gompel. *Id*.

1. Nancy's "Equitable Life Estate"

Ind. Code § 32-21-1-1 provides a person may not bring an action involving any contract for the sale of land "unless the promise, contract, or agreement on which the action is based, or a memorandum or note describing the promise, contract, or agreement on which the action is based, is in writing and signed by the party against whom the action is brought or by the party's authorized agent."

Much of the Olivareses' argument is premised on language in the deed to the effect Nancy quitclaimed any right that "may be found in her or by her claimed, *legally;*" (App. at 4) (emphasis supplied). From this, she appears to argue judgment on the evidence was precluded because she claimed "an *equitable* life estate" in the property. (Appellants' Reply Br. at 12) (emphasis supplied).

The "legally" qualification on which Nancy relies is found in a passage that refers to the right, title or interest created "by virtue of [the Rhodes'] warranty deed[.]" (App. at 4.) That deed included no explicit or implicit reference to an "equitable life estate" in Nancy. We must accordingly find the deed Nancy prepared, in which she "disclaims any right, title or interest" in the property, means what it says and reserves no "equitable life estate." Judgment on the evidence was not error on that ground.

2. Motion for Change of Venue and/or Judge

The Olivareses moved for change of venue or change of judge on March 25, 2006. Ind. Trial Rule 76 provides in pertinent part:

> In any action except criminal no change of judge or change of venue from the county shall be granted except within the time herein provided. Any such application for change of judge (or change of venue) shall be filed not

> later than ten [10] days after the issues are first closed on the merits. Except: (1) in those cases where no pleading or answer may be required to be filed by the defending party to close issues (or no responsive pleading is required under a statute), each party shall have thirty [30] days from the date the same is placed and entered on the chronological case summary of the court[.]

This case was filed as a Small Claims matter. There is no responsive pleading required, and Ind. Small Claims Rule 4 provides "All defenses shall be deemed at issue without responsive pleadings[.]" The Olivareses were therefore required to file their motion within thirty days from February 21, 2006. (App. at ii.) They did not do so, and denial of their Rule 76 motion was not error.

We affirm the trial court's judgment in all respects.

Affirmed.

DARDEN, J., and CRONE, J., concur.